

The Public's Role in Cooperative Natural Resource Damage Assessment

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At major cleanup sites across the United States, such as National Priorities List sites and federal facilities, there is a great deal of public awareness and involvement in the remedy selection process, through public meetings, advisory boards, and direct community organizing. At most of these sites, even where natural resource contamination is an issue, community members and environmental organizations are unaware of the Natural Resource Damage (NRD) assessment and restoration process. However, a properly structured public participation program, built around community advisory groups, can strengthen NRD programs, serving not only the public, but the trustees and responsible parties.

The Obstacles

Cooperative Assessment provides a significant opportunity to involve these publics in the NRD process, but there are significant obstacles to overcome.

First and foremost, the public—and surprisingly enough, many representatives of government agencies—are unaware of the NRD process, particularly at hazardous waste sites. This is largely because the NRD “train” is just picking up steam. Nationally, relatively few cleanup sites have been addressed under NRD authorities, compared to the vast universe of properties undergoing cleanup under state and federal statutes.

Moreover, the agencies that usually brief the public about the cleanup process, U.S. EPA and its state counterparts, do not have direct NRD jurisdiction. It shouldn't be surprising that they focus on those aspects of the cleanup laws over which they have jurisdiction. Furthermore, at federal facilities, where public participation programs are generally most developed, federal trustees are unlikely to step forward because, under the unitary theory of the Executive branch, they are unable to follow up with litigation.

Second, when natural resource trustees appear, even to review the potential for an NRD assessment, the public is already confused by the multiplicity of government agencies present at the table. I remember one recent public meeting in my county, about the discovery of perchlorate in local drinking water, where there were representatives from the Water Board, the Water District, U.S. EPA, Cal-EPA, the Health Department, and the Agency for Toxic Substances and Disease Registry. People off the street have enough trouble learning the acronyms, let alone the roles and responsibilities of each agency. NRD introduces a whole new suite of agencies, and even the most experienced activist is likely to have trouble sorting out their roles.

Third, even if community members figure out who the players are, they are unlikely to understand the rules of the game. They rarely even know what NRD. They surely don't know the protocols for assessing the health of bird eggs, let alone the meaning of “benthic organism.” Without extensive explanation, even the brightest volunteers don't understand how public goods, such as a restored estuary or cleaner air, are assigned dollar values. But officials who feel

pressure to deliver results quickly usually don't want to step back and initiate a major program of public education.

Fourth, at many sites, agencies do not know how to approach the "community" because it appears to be fragmented. Some stakeholders are most concerned about public health. Others are concerned about ecological damage. Yet others are worried about the impact that publicity has on their property values, while some seem to focus on reuse, not health issues. Why seek public advice, officials may reason, when communities cannot agree among themselves.

Finally, few community members have the time, energy, and interest both to educate themselves and participate in what may be an extended series of meetings and events, let alone reading through binders of material. Unless they have a direct personal economic interest—like fishers after an oil spill—the oversight of cleanup has trouble competing with the PTA, soccer practice, union meetings, etc.

The Opportunity

The dismal state of public participation in both NRD assessment and restoration planning is unfortunate, because (1) NRD, particularly cooperative NRD Assessment, is a tool that may offer results beyond what remedial action alone provides and (2) trustees and responsible parties may benefit from constructive public participation.

At many cleanup sites where natural resources are a major concern, community members have suggested that cleanup dollars be spent not only to remove or treat contamination, but to enhance the ecological value of resources. Particularly at federal facilities, we've been told: Cleanup money can't be spent on ecological restoration. The NRD process, however, provides additional flexibility, because it introduces the "damages" mechanism. This may allow money to be spent to compensate for the impact of pollution, not just to clean it up. Thus an informed public can use the NRD process to achieve important goals that the remedial action framework makes it difficult to address.

Historically, however, many agencies and responsible parties have feared public involvement. They have seen it as a nuisance at best and a threat to their personal safety at worst. They fear that a public NRD process would provide hostile activists with a chance to pile on, to add insult to injury. To be sure, there are troublemakers in our communities. In fact, many of them are in my data base.

Yet other officials and companies have recognized that involving the public in such a process, early and often, usually brings more benefits than risks. They first accepted institutionalized public participation as a way to avoid litigation or civil disobedience, but a growing number of decision-makers understand that good public participation actually improves decision-making. Community members have local knowledge that responsible parties, regulators, and trustees may lack. Particularly when they speak with a unified voice, they may offer a restoration vision superior to those put forward by external authorities.

That is, a good public participation process will not only remove obstacles to sound assessment and restoration. It will help achieve NRD goals in a way that everyone understands.

The Mechanisms

The first step in promoting enhanced public participation in NRD is to develop and disseminate information materials that not only explain the NRD process in the context of the local site, but which also outline the opportunities for plugging into that process. It shouldn't be hard. Much of the information has already been prepared.

To me this is a no-brainer, but it won't happen if the responsible parties and trustees don't believe public participation will be a positive element. It's easy to publish a legal notice or hold a meeting in the middle of a business day, and then conclude from the poor turnout that no one cares. It takes a little more effort to generate a buzz in the community. I recognize that at some locations there will not be sufficient interest to create a serious public involvement program. However, at most cleanup sites with significant natural resource issues, "if you build it they will come."

There are many tools for successful public participation, ranging from newsletters and Internet bulletin boards to regular public meetings. In my experience—primarily at contaminated federal facilities—I find that community advisory groups are usually, but not always, the most effective approach. They are established only where there is community interest.

Today the Defense Department sponsors about 300 Restoration Advisory Boards (RABs) to oversee site investigation, remedial decision-making, and even planning for long-term stewardship. A few such boards have descended into hostility. A few more have trouble attracting community members to regular meetings. A number are just rubber stamps.

But the overwhelming majority of RABs have improved the process. Communities better understand the cleanup process and what decisions must be made. They are better able to develop community consensus on proposed plans. Even when decision-makers are reluctant to listen, they have the knowledge and credibility to organize to achieve community objectives.

I believe the advisory group model fits the NRD process well. It may involve adding NRD discussions to the agendas of existing advisory groups, or it may require the formation of new bodies. In either case, the principle is the same. Involve representatives of the affected community early, and often. In short, where a handful of dedicated people—usually numbering five to twenty-five—are willing to participate, the obstacles to public involvement disappear.

The chief advantage of the advisory group model, over conventional public meetings, is that members develop a more thorough understanding of the process and the rules that govern it, as well as the technical issues that must be resolved. They have the opportunity, over time, to personally get to know decision-makers and their consultants. Particularly if community members have access to independent technical assistance, they are able to determine which issues are important and provide continuing, constructive input. Once community activists are "part of the solution," they make it easier to regulators and the regulated to approach their challenges as partners, not adversaries.

Advisory groups do not substitute for community meetings, some of which may be legally mandated. But advisory group members become intermediaries, reporting to the community at large, interpreting activities and issues for their less frequently involved neighbors, and reporting any feedback. At the Moffett Field RAB, of which I am a member, the community co-chair of the board actually chaired public meetings while other members spoke in favor of the negotiated preferred alternatives.

NRD advisory groups, like remedial action-oriented advisory boards, should welcome representatives of a wide range of public constituencies. In my experience, members with different personal or organizational agendas learn each other's objective and priorities, and more often than not they negotiate a consensus, making it easier for decision-makers to please what originally seemed to be a disjointed or disorganized public.

It's important to recognize, however, that NRD will bring to the table groups that might not already be involved in cleanup discussions. First, environmental organizations with a regional scope—based upon watersheds, airsheds, or bird migration—typically show more interest in natural resource discussions than the health impact of groundwater or soil pollution. Second, people or institutions directly affected financially by pollution, such as fishers or owners of impacted property, may also become more involved. The latter group, in particular, may have legal standing which makes them parties, not just advisors, in ensuing discussions.

Recent history—roughly fifteen years—has shown that agencies and responsible parties that seek constructive public involvement in cleanup programs usually get it. It takes a positive attitude, administrative support, and often, independent technical assistance. Applied to NRD, the same advisory board model should not only reduce or eliminate public opposition to constructive NRD solutions, but it is also likely to make it easier for the other stakeholders to work together to achieve common or overlapping (“win-win”) objectives. More often than not, community members, as they agree upon natural resource objectives among themselves, will get what they want.